

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA

TOMAS NOEL GUEVARA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 DAVID MILLER, Warden, )  
 )  
 Respondent. )

No. CIV-10-27-W

**ORDER**

On March 17, 2010, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this matter and recommended that the Court dismiss the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Tomas Noel Guevara for failure to exhaust available state court remedies as to all claims. Guevara was advised of his right to object to the Report and Recommendation, and the matter now comes before the Court on Guevara's Notice to Court of Exhaustion of State Remedies [Doc. 21] file-stamped June 28, 2010.

Under the circumstances, the Court

(1) DECLINES at this stage to consider the Report and Recommendation [Doc. 11] issued on March 17, 2010; and

(2) RE-REFERS this matter to Magistrate Judge Roberts for reconsideration of the issue of exhaustion in light of Guevara's contention that "all claims raised in the instant [P]etition . . . are fully exhausted . . . ."

ENTERED this 29<sup>th</sup> day of June, 2010.

  
LEE R. WEST  
UNITED STATES DISTRICT JUDGE